

PUBLIC NOTICE

**US Army Corps
of Engineers®**

APPLICATION FOR PERMIT

LOS ANGELES DISTRICT

Public Notice/Application No.: 200201266-DPS

Comment Period: May 12, 2003, through June 12, 2003

Project Manager: Daniel P. Swenson (213) 452-3414 daniel.p.swenson@usace.army.mil

Applicant

Alan Cummins
Upper K-Shapell J.V.
8383 Wilshire Boulevard, Suite 700
Beverly Hills, California 90211

Contact

Sheppard Mullin
Attn: Robert Uram
Four Embarcadero Center, 17th Floor
San Francisco, California 94111

Location

The proposed project site is located in Orange County, California (Figure 1). The site (VTTM 16209) is within the northern portion of the City of Yorba Linda, and is located north of Yorba Linda Boulevard and east of Fairmont Boulevard (Figure 2). The site is situated at approximately latitude: 33° 53' 49"N and longitude: 117° 47' 32"W.

Activity

The Upper K-Shapell Joint Venture proposes to discharge fill materials into waters of the U.S. associated with the construction of a medium density residential housing development, a community park, and a neighborhood park (Figure 3). The proposed project would permanently impact approximately 1.22 acres of waters of the U.S. (including 0.25 acre of wetlands). This project would also impact the territories of five pairs and the partial territory of one additional pair of coastal California gnatcatchers (*Poliophtila californica californica*).

It should also be noted that Shapell Industries, Inc. has simultaneously proposed to discharge fill materials into waters of the U.S. associated with the construction of a medium density residential housing development and a senior residential facility on an adjacent property to the west (VTTM 16208)(Figure 2). This proposed project (VTTM 16208) would permanently impact approximately 0.55 acres of waters of the U.S., none of which is wetlands. This project would also impact the territories of two pairs and the partial territory of one additional pair of coastal California gnatcatchers. Additional information regarding this project is available in a separate public notice (No. 20021265-DPS).

Interested parties are hereby notified that an application has been received for a Department of the Army permit for the activity described herein and shown on the attached drawing(s). Interested parties are invited to provide their views on the proposed work, which will become a part of the record and will be considered in the decision. This permit will be issued or denied under Section 404 of the Clean Water Act of 1972 (33 U.S.C. 1344). Comments should be mailed to:

U.S. Army Corps of Engineers, Los Angeles District
Regulatory Branch
ATTN: CESPL-CO-R-200201265-DPS
P.O. Box 532711
Los Angeles, California 90053-2325

Alternatively, comments can be sent electronically to: daniel.p.swenson@usace.army.mil

Evaluation Factors

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof. Factors that will be considered include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people. In addition, if the proposal would discharge dredged or fill material, the evaluation of the activity will include application of the EPA Guidelines (40 CFR 230) as required by Section 404 (b)(1) of the Clean Water Act.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Preliminary Review of Selected Factors

EIS Determination- A preliminary determination has been made that an environmental impact statement is not required for the proposed work.

Water Quality- The applicant is required to obtain water quality certification, under Section 401 of the Clean Water Act, from the California Regional Water Quality Control Board. Section 401 requires that any applicant for an individual Section 404 permit provide proof of water quality certification to the Corps of Engineers prior to permit issuance. For any proposed activity on Tribal land that is subject to Section 404 jurisdiction, the applicant will be required to obtain water quality certification from the U.S. Environmental Protection Agency.

Coastal Zone Management- This project is located outside of the coastal zone and will not affect coastal zone resources.

Cultural Resources- The applicant has conducted a cultural resources records search and field survey for the proposed project site. The records search and field survey did not find any on-site cultural resources. Therefore, formal consultation under Section 106 of the National Historic Preservation Act does not appear to be required at this time.

Endangered Species- The Corps has determined the proposed project may affect the Federally-endangered coastal California gnatcatcher (*Poliophtila californica californica*, CAGN) as well as the critical habitat of this species. This determination is based on a biological assessment (BA) prepared by the applicant, various focused surveys conducted in support of the proposed project and others, as well as other relevant information on threatened and endangered species in the project vicinity. The site contains five pairs and the partial territory of one additional pair of coastal California gnatcatchers. The Corps will initiate formal consultation pursuant to Section 7 of the Endangered Species Act with the U.S. Fish & Wildlife Service (FWS) to address potential impacts to the coastal California gnatcatcher and its critical habitat.

Public Hearing- Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearing shall state with particularity the reasons for holding a public hearing.

Proposed Activity for Which a Permit is Required

The proposed activity, requiring a permit, is to discharge fill in waters of the U.S. (WoUS) associated with the construction of a medium density residential housing development (Figure 3), a non-water dependent use. The proposed activity (applicant's proposed alternative) would consist of road crossings and fill for building pads, approximately 58.8 developable acres. The proposed discharges would result in permanent fill of approximately 1.22 acre of waters of the U.S. (including 0.25 acre of wetlands).

Additional Project Information

Baseline Conditions-

The proposed project site lies within the Santa Ana River Basin. It has historically been used for grazing and limited agriculture activities prior to 1960, and recently, the south-central portion has been used for stockpiling artificial fill including general construction debris. This site comprises approximately 126 acres and contains four jurisdictional drainages (referred to as drainages A, B, C, and D) (Figure 3). There are 1.22 acres of jurisdictional waters of the United States, of which 0.25 acre is wetland. According to the biological survey the project contains approximately 38.22 acres of coastal sage scrub and is occupied by five pairs and the partial territory of one additional pair of coastal California gnatcatchers (Figure 4).

Description of Jurisdictional Waters of the U.S.

Drainage A. Drainage A totals approximately 0.16 acre, none of which constitute jurisdictional wetlands. Drainage A is located in the northwestern portion of the site and totals approximately 2,170 feet in length. The upper two thirds of the Drainage A is ephemeral. However, the lower third of Drainage A is intermittent due to a two-foot wide outflow structure that releases water regularly from a nearby off-site pumping station. All of the Drainage A would be impacted as a result of the proposed project.

Drainage B. Drainage B totals approximately 0.16 acre, of which approximately 0.02 acre constitutes jurisdictional wetlands. Drainage B is located along the northern edge of the site and totals approximately 2,150 feet in length. The wetland portion is located at the uppermost reach of the drainage. All of Drainage B and its associated wetland area would be impacted as a result of the proposed project.

Drainage C. Drainage C totals approximately 0.50 acre of which approximately 0.23 acre constitutes jurisdictional wetlands. Drainage C originates in the lower section of the southeastern portion of the site at the terminus of a five-foot wide reinforced concrete pipe and receives water year-round from nuisance flows. Drainage C measures approximately 1,500 feet in length including two smaller braids. All of Drainage C and its associated wetland area would be impacted as a result of the proposed project.

Drainage D. Drainage D totals approximately 0.40 acre, none of which constitutes jurisdiction wetlands. Drainage D originates off site and is located in the northwestern portion of the site. Drainage D measures approximately 710 feet in length and exhibits an incised channel until it reaches the uppermost portion of a retention basin. Along the western edge of the site, drainage D continues off-site and connects to a drainage on the adjacent property (VTM 16208). All of Drainage D would be impacted as a result of the proposed project.

Table 1. Existing jurisdictional acreage and proposed impacts.

	<u>Existing</u>			<u>Proposed impacts</u>
Drainage Name	Total Waters of the U.S. (acres)	Wetlands (acres)	Non-Wetland Waters (acres)	Total Waters of the U.S. (acres)
Drainage A	0.16	0.00	0.16	0.16
Drainage B	0.16	0.02	0.14	0.16
Drainage C	0.50	0.23	0.27	0.50
Drainage D	0.40	0.00	0.40	0.40
Total	1.22	0.25	0.97	1.22

Project Purpose and Need Statement- The Corps has determined the basic purpose of the proposed project is housing. The proposed project would meet the private need to generate revenue through development of private land. The proposed project is not water dependent. The overall project purpose is to construct a medium density residential development (single-family residential), a community park, and a neighborhood park located within a 10-mile radius of the proposed project site.

Alternatives Analysis- Currently, a full range of alternatives are being developed.

Proposed Mitigation- The applicant has proposed to create 3.27 acres of waters of the U.S., all of which would be wetlands, within the existing watershed located on parcels adjacent to and south of the proposed project site.

Proposed Special Conditions- No special conditions have been proposed at this time.

For additional information please call Daniel P. Swenson of my staff at (213) 452-3414. This public notice is issued by the Chief, Regulatory Branch.

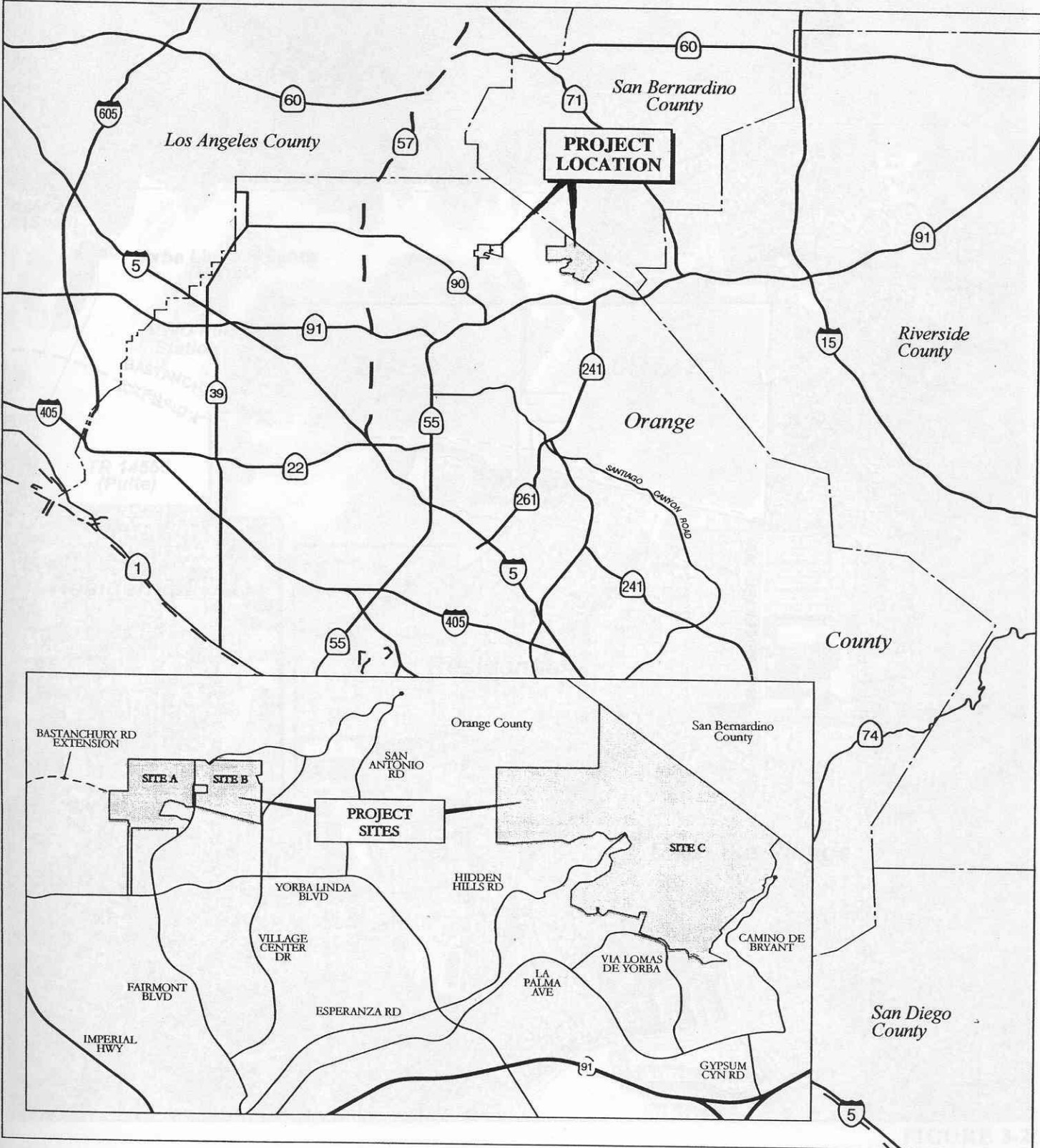
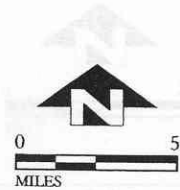


FIGURE 3-1

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Inc.



North Yorba Linda Estates
Project Location

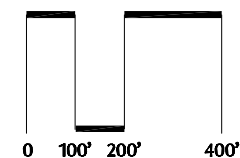
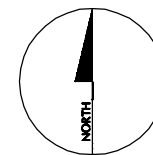
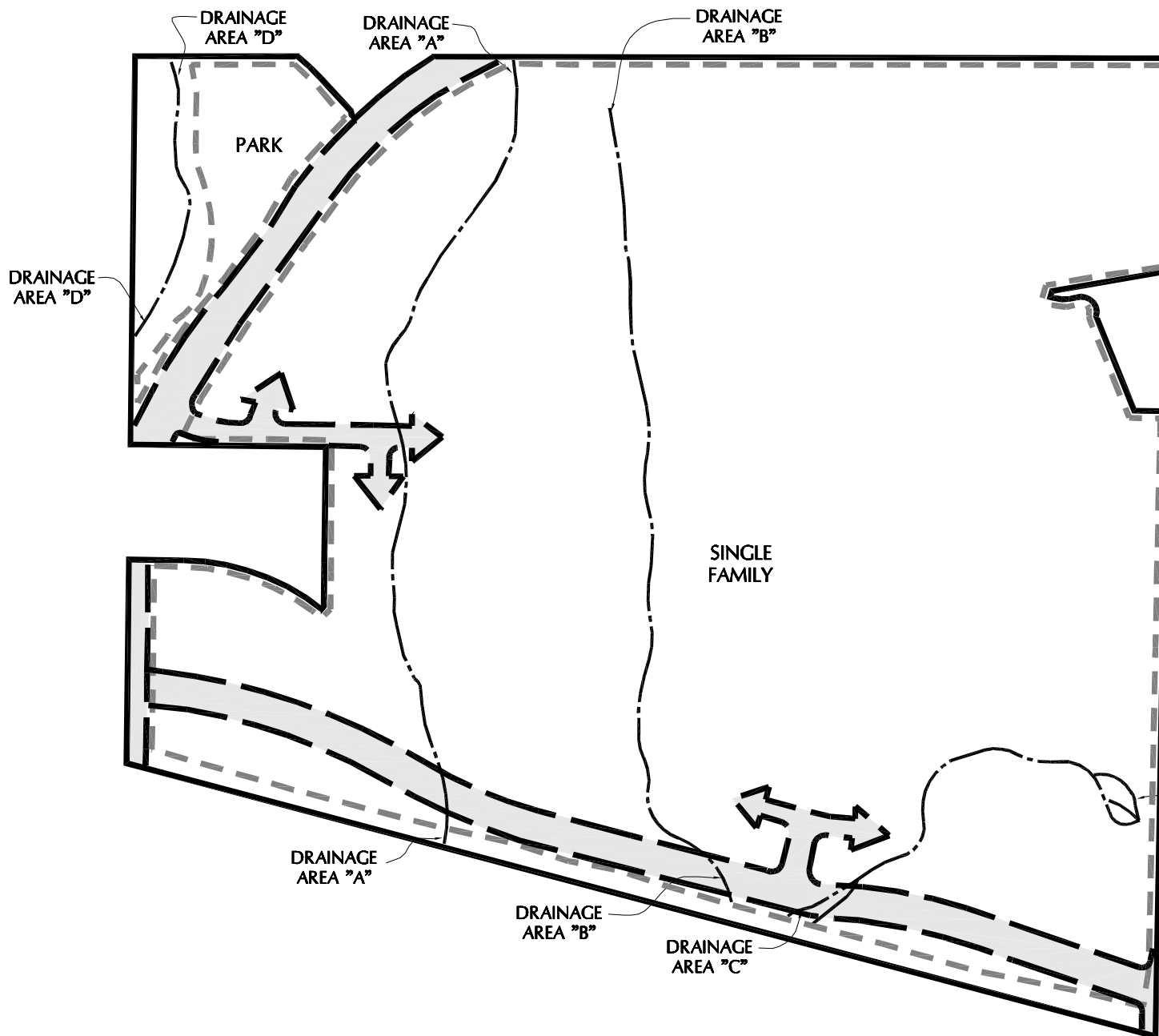


FIGURE 3-2

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Inc.



North Yorba Linda Estates
Existing Land Uses
Sites A & B



LEGEND

- PROJECT BOUNDARY
- DEVELOPMENT AREA LIMITS
- ACCESS ROADS
- JURISDICTIONAL DRAINAGES

DATE PREPARED: 4/10/03

DRAINAGE AREA "C"

PREPARED FOR:



S & S Construction Co.
4940 Campus Drive
Newport Beach, CA 92660
(949) 253-7680

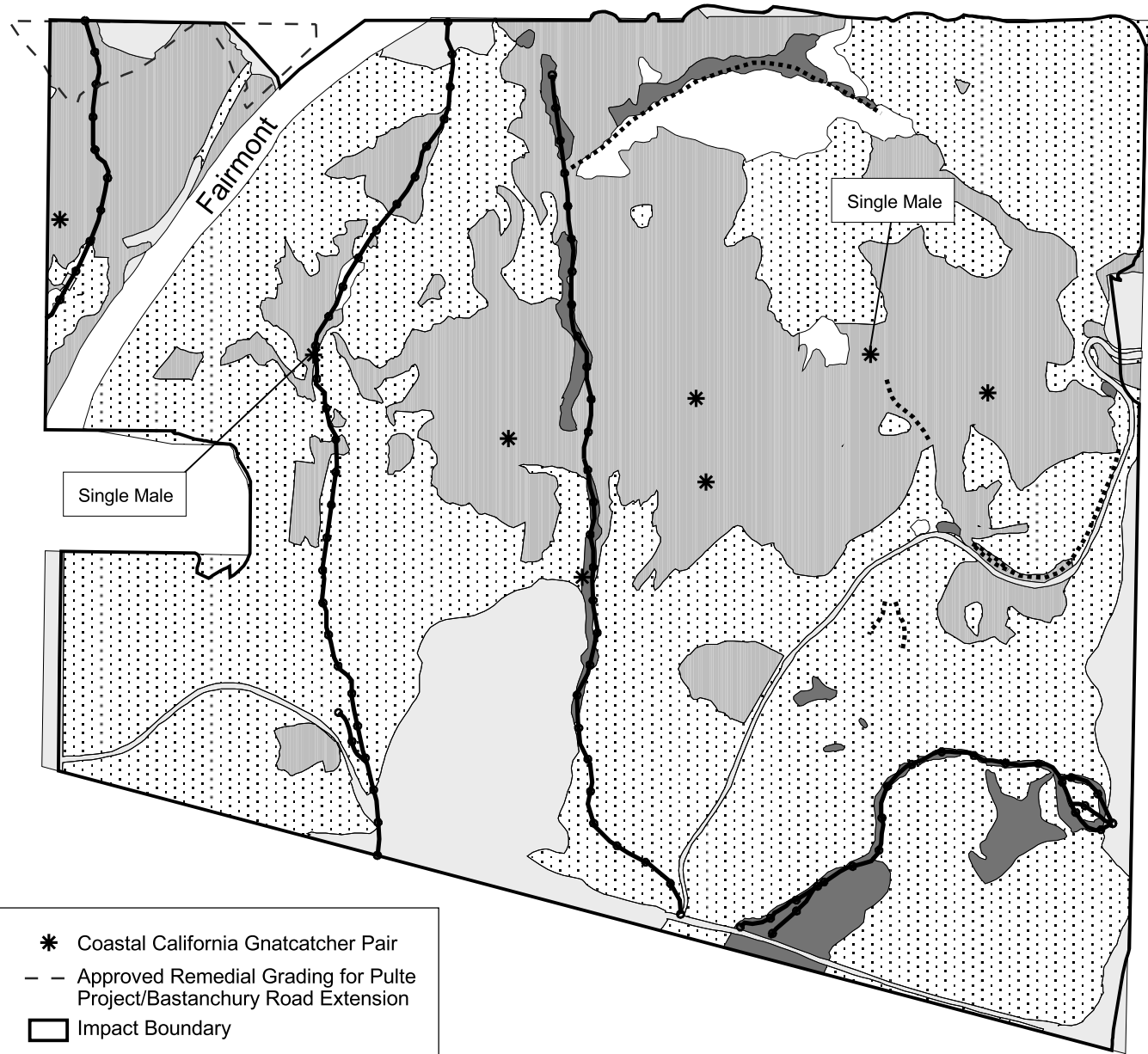
PREPARED BY:



HUNSAKER & ASSOCIATES
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Three Hughes • Irvine, CA 92618 • PH: (949) 583-1010 • FX: (949) 583-0759

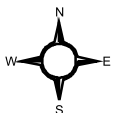
PREFERRED ALTERNATIVE / VTTM - 16209

PROPOSED VESTING TENTATIVE TRACT MAP



Biological Resources – Project Impacts/Tentative Tract 16209

Biological Assessment for Tentative Tracts 16208 and 16209



400 0 400 Feet

Bonterra
CONSULTING

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